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SENATE

REPORT
99-410

COLORADO RIVER FLOODWAY PROTECTION ACT

AUGUST 15 (legislative day, AUGUST 11), 1986.—Ordered to be printed

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Mr. ABDNOR, from the Committee on Environment and Public Works, submitted the following

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REPORT

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DEPOSITORY 378

[To accompany S. 1696]

The Committee on Environment and Public Works, to which was referred the bill (S. 1696) to establish a federally declared Floodway for the Colorado River below Davis Dam, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

BACKGROUND

The Colorado River is one of the most highly regulated river systems in the Nation. The numerous dams on the Colorado River system represent a multi-billion dollar Federal and State investment which yields enormous flood control, water supply, and hydroelectric benefits. The operation of these dams requires the Bureau of Reclamation to balance the competing nature of these multiple benefits.

Following the construction of Glen Canyon Dam in 1963, a temporary, 17-year flow regime of highly controlled water supply releases was experienced along the Lower Colorado River as Lake Powell was filled. This condition provided a false sense of security and allowed local residents and businesses to ignore the repeated warnings of the Bureau of Reclamation and the Corps of Engineers not to build in the floodplain downstream of Hoover Dam. With the completion of the filling of Lake Powell in 1980, the River returned to its previous flow regime of frequent flood control releases.

Despite these flood control releases and despite the best efforts of the Bureau of Reclamation to discourage it, development within the floodplain continues. Testimony before the Committee indicated that this development presents a serious problem with respect to the Bureau's ability to operate the upstream reservoir system.

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Contributing to this situation is the fact that numerous Federal grants, subsidies, and programs which encourage development are available within the floodway. These include such things as Federal flood insurance, sewer and highway grants, Federal property leases, and loans to small businesses.

Furthermore, in the event of flooding, many of the residences and businesses in the floodway (whether built using Federal funds or not) are eligible for Federal disaster relief or flood insurance payments.

For example, in 1983, 1984, and 1985, flooding on the lower Colorado River caused millions of dollars of damage to homes, businesses, and public facilities. During 1983 alone, the Federal Government paid $3 million in flood insurance claims and $4.9 million in other forms of disaster relief for flood related damages in the floodway area. If the development of the floodplain continues, Federal expenditures due to flooding in the area can be expected to increase.

Perhaps more importantly, if the development of the floodplain continues, it can be expected that pressure to increase the flood storage capacity of the upstream dams will mount. Such an increase of flood storage capacity can only be obtained at the expense of the water supply storage behind the dams. The Bureau of Reclamation has calculated that to provide the flood control storage necessary to prevent the flood flows of 1983, water supply storage valued well in excess of $1 billion would have to be foregone. Since the resulting flood control benefits in no way approach this level of magnitude, such a reallocation of resources is clearly unacceptable.

In reporting the Coastal Barriers Resources Act (P.L. 97-348) the Committee on Environment and Public Works gave explicit recognition to the idea that in certain areas of high risk, Federal development assistance and incentives should be withdrawn to help save Federal dollars and eliminate resource use conflicts. By its approval of S. 1696, the Committee again recommends this approach to the Senate as the best way to address the serious problems caused by the continued development of the Lower Colorado River floodplain.

Discussion

The main purpose of S. 1696 is to withdraw Federal assistance for new development within the Colorado River floodplain. The bill requires the establishment of a federally declared Floodway after an extensive study and public participation process. Within the Floodway, most forms of Federal development-related assistance would be prohibited, but existing development would be grandfathered. The most important form of grandfathering would be the continued availability (within certain limits) of flood insurance, and the continued, conditional eligibility for disaster assistance. In addition, Federal leasing would be required to be consistant with protection of the Floodway.

The bill contains no zoning or restrictions on the use of private land. That remains the responsibility of local governments. Residents of the affected areas will be allowed to build anywhere they could legally build under existing law, and to obtain traditional

forms of bank financing for such construction, as well as any available private flood insurance.

Furthermore, the bill does not tell the Bureau of Reclamation or the Corps of Engineers how to manage the Colorado River. If management changes are necessary or desirable, they can be made in the same manner in which they would be made now. Section 9 of S. 1696 specifically preserves all necessary legal authority for both agencies, and generally protects the existence and operation of the "Law of the River".

S. 1696 has the unanimous support of all of the states in the Colorado River Basin and enactment of the bill will accomplish several important objectives: first, it will protect existing conservation storage along the Colorado River, thus reducing the need for new water project construction in a growing area of the country. Second, maintenance of the Floodway as specified in this legislation will decrease future flood damages. Third, because a more natural flood flow regime can be assured, downstream riparian fish and wildlife habitat is likely to be enhanced.

Finally, implementation of S. 1696 will require a very small Federal expenditure, and if the benefits which are expected from this legislation are realized, the Federal Government will actually save tens of millions of dollars over the next several decades.

Section-by-Section Analysis

Section 1.—Short Title.

Section 2. Congressional Findings and Purposes.—Congress finds that maintenance of the Colorado River Floodway is essential to accomplish the multiple purposes of the dams and other control structures on the Colorado River. Congress finds that certain Federal programs which subsidize or permit development within the Floodway threaten human life, health, property, and natural resources. Congress finds further that coordinated Federal, State, and local action is necessary to limit floodway development.

The purposes of the Act are to: "establish the Colorado River Floodway * * * to provide benefits to river users * * *" and to "establish a Task Force to advise the Secretary of the Interior and the Congress on establishment of the Floodway and on managing existing and future development within the Floodway * * *"

Section 3. Definitions.—The definition of the term "financial assistance" is virtually identical to the definition contained in the Coastal Barrier Resources Act, P.L. 97-348.

Section 4. Colorado River Floodway Task Force.—This section establishes a Colorado River Floodway Task Force and specifies its membership and functions. The Task Force is to consider and make recommendations to the Secretary of the Interior and to the Congress concerning "the means to restore and maintain the Floodway * * *" including any necessary additional legislation; "the necessity for additional Floodway management legislation * * *"; "design criteria for the creation of the floodway boundaries * * *"; "the review of mapping procedures"; the possibility of "compensation * * * in specific cases of economic hardship resulting from impacts of the 1983 flood on property outside the Floodway which could not reasonably have been foreseen"; and, "The po-

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tential application of the Floodway on Indian lands and recommended legislation or regulations needed * * *". The Task Force membership will contain representatives of a wide variety of local, State and Federal interests. The Committee anticipates that federal agencies will actively participate in Task Force activities, so that local and State views will receive a full hearing.

Section 5. COLORADO RIVER FLOODWAY.—This section requires the Secretary of the Interior, in consultation with the seven Colorado River Basin States, the Colorado River Floodway Task Force, and other interested parties, to—

(1) complete a study of the tributary floodflows downstream of Davis Dam; and

(2) define the specific boundaries of the Colorado River Floodway so that the Floodway can accommodate either a one-in-one hundred year river flow consisting of controlled releases and tributary inflow, or a flow of forty thousand cubic feet per second (cfs), whichever is greater, from below Davis Dam to the Southerly International Boundary between the United States of America and the Republic of Mexico.

The standard level of protection that has been adopted in the administration of the National Flood Insurance Act is the one-in-one hundred year frequency flood. The Corps of Engineers has determined that 40,000 cubic feet per second (cfs) is the maximum release rate that historically would have inflicted a minimum level of downstream damages and has incorporated this flow level in its Hoover Dam flood control regulations continually since 1935. Consequently, the boundaries of the Colorado River Floodway should be capable of accommodating a one-in-one hundred year river flow or a 40,000 cfs flow, whichever in greater, from Davis Dam to the Southerly International Boundary between the United States and Mexico.

It is the Committee's judgment that the Secretary's analysis of the one-in-one hundred-year river flow should represent a realistic one-in-one hundred-year probability of such flow occurring in any reach of the river at a given time, and should not arbitrarily assume that flood inflows from all tributaries occur simultaneously. It is the nature of weather events along the Lower Colorado River, a desert region, that most rain storms are intense, localized thunder showers that would produce floods from only a few tributaries at a time, and the Secretary's study should reflect this.

Section 6. LIMITATIONS ON FEDERAL EXPENDITURES AFFECTING THE FLOODWAY.—This section states that, except as provided in Section 7, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Floodway.

Section 7. EXCEPTIONS.—There are several functions and uses of the floodway that serve the public interest, and are generally compatible with floodway operation. This section recognizes those functions and uses by providing limited exceptions, generally subject to Secretarial discretion, to the prohibition on Federal expenditures. These exceptions are enumerated as public and tribal roads, military activities, fish and wildlife enhancement projects, navigation aids, emergency action assistance, public health assistance, public and Tribal recreational developments, and compatible agricultural

uses that do not involve permanent crops and include only a minimal amount of permanent facilities in the floodway.

In general, the term "permanent crops" is to mean those crops which have a normal life of five years or more or which would be an obstruction to river flood flows. In this regard, crops such as alfalfa, grains such as wheat, barley, oats, etc., asparagus, cotton, lettuce, cauliflower, melons, tomatoes, carrots, etc., should not be considered "permanent crops" for the purposes of this bill. However, date, citrus, pistachio, or pecan trees would be examples of "permanent crops".

Similarly, "permanent facilities" are those improvements that would obstruct river flood flows. Therefore, facilities such as canals, laterals, etc., should not be required as "permanent facilities" for the purposes of this Act.

In addition, river control structures and related works are also exempted under this section. Attention should be given to the control of tributary flows, and erosion problems. the Secretary has authority to review tributary inflow systems both on and off reservation lands. Additionally, the Secretary can review progress on the bank stabilization program on the reservations along the Lower Colorado and determine whether additional work is necessary in this regard.

This section also includes language which makes permissible federal funding of certain aspects of the proposed Yuma Crossing Park development. Specifically, the bill will permit federal funds to be used for restoration activities at National Historic Landmarks, and utility or interpretive improvements which are essential or closely related to the purpose of restoring these National Historic Landmarks. The utility improvements must be floodproofed in accordance with sound engineering practice wherever and whenever possible. The Committee has been informed that the cost of improvements which are permissible under this section will not exceed $225,000 (1986 dollars).

Section 8. CERTIFICATION ON COMPLIANCE.—This section requires that the Secretary of the Interior certify to Congress on an annual basis that Federal agencies are in compliance with this Act.

Section 9. PRIORITY OF LAWS.—Section 9 contains a series of provisions to make certain that current laws and regulations governing the operation of the Colorado River, often referred to as the "Law of the River," are not affected by the Act. Since the River and reservoir management programs currently in effect are established under current laws and regulations, these programs will be unaffected as well.

Section 10. SEPARABILITY.

Section 11. REPORTS TO CONGRESS.—This provision requires the Secretary of the Interior to report to Congress within one year after the date of enactment of the Act with respect to: 1) the Colorado River Floodway, 2) the report of the Colorado River Floodway Task Force, and 3) his further recommendations concerning Floodway matters.

Section 12. AMENDMENTS REGARDING FLOOD INSURANCE.—Section 12 conforms certain provisions of the National Flood Insurance Act to this Act. Specifically, it grandfathers flood insurance coverage for existing development, and limits its availability for future de-

velopment. This provision is modeled on the comparable provisions of the Coastal Barrier Resources Act ("CBRA"), P.L. 97-348. The definition of "new construction" is based on Federal Emergency Management Administration ("FEMA") regulations defining the term "insurable building" promulgated in implementing the CBRA.

Section 13. FEDERAL LEASES.—This section sets forth provisions controlling Federal leasing within the Floodway. Leases of lands owned in whole or part by the United States (including Indian and other trust lands of the United States) are required to be consistent with the operation and maintenance of the Floodway. It also contains a separate, and parallel, provision for Lake Mohave.

This section also clarifies that, with respect to Indian lands held in trust by the United States within the floodway, leasing may take place if one or both of the following conditions are met: 1) if the activities for which the lands are leased are exempted under section 7 of this act, or 2) if no federal money for construction or operation and maintenance is provided and if the lessee, tribe, or individual has provided sufficient insurance or security to insure against all reasonably forseeable, direct, and consequential damages to the property of the tribe, private persons, and the United States, which may result from the proposed lease.

Section 14. NOTICES AND EXISTING LAWS.—Section 14 requires notice of certain provisions of existing law and of this Act to be given to residents of areas in the Floodway and to federal lessees. It provides for the continuation in the floodway area of the National Flood Insurance Program (except as specifically altered by the Act) and its integration with the requirements, including the mapping provisions, of this Act. The Department of the Interior, in carrying out its responsibilities under this Act, should work closely and on a cooperative basis with representatives of the Federal Emergency Management Agency ("FEMA") to ensure that existing programs, such as the National Flood Insurance Program, can be supplemented as inexpensively and effectively as possible.

Section 15. AUTHORIZATION OF APPROPRIATIONS.—Section 15 authorizes a total of $600,000 over a five year period, in addition to any other funds now available to the Department, for implementation of the Department's and FEMA's responsibilities under the Act. It also provides that Sections 6 and 7 are not affected by the provisions of this section. In addition, this section clarifies that Indian tribes may be eligible under Public Law 93-638 to contract for studies of Indian lands required under the provisions of this Act.

HEARINGS

On April 22, 1986, the Subcommittee on Water Resources held hearings on S. 1696. Testimony was received from Senators Goldwater and DeConcini, representatives of the Bureau of Reclamation, the Corps of Engineers, the Federal Emergency Management Agency, the Seven Colorado River Basin States, the Mohave County Board of Supervisors, the Colorado River Indian Tribes, and the National Wildlife Federation.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of legislation be noted in the report on that legislation.

This bill was ordered reported by a rollcall vote of 10 yeas and 0 nays.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Improvement Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 15, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Dirksen Senate Office building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1696, the Colorado River Floodway Protection Act, as ordered reported by the Senate Committee on Environment and Public Works, August 12, 1986. We estimate that enactment of the bill would result in costs to the federal government of approximately $400,000 in 1987 and $200,000 in 1988.

S. 1696 would establish a federally-declared floodway for the Colorado River below Davis Dam and would create a Colorado River Floodway Task Force to prepare recommendations concerning the management of the floodway. The bill would require the Secretary of the Interior, within one year of enactment, to prepare an official map and a report on the floodway. In addition, the bill would restrict future federal expenditures and financial aid to specific public health, safety and environmental purposes on public and tribal lands, and would restrict the granting of new federal leases on public lands within the floodway. Finally S. 1696 would amend the National Flood Insurance Act of 1968 to limit flood insurance coverage on new construction of improvements of structures within the floodway.

The bill authorizes the appropriation of $600,000 to the Department of the Interior to carry out the mapping and reporting provisions of this bill. The bill specifies that funds shall be made available to the Federal Emergency Management Agency for the purposes of mapping. Based on the obligation rates of similar programs, CBO estimates that outlays would total $400,000 in 1987 and $200,000 in 1988, assuming appropriation of the authorized amount by October 1, 1986.

Enactment of this bill would have no significant impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

EVALUATION OF REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of this legislation.

Only Section 12 of this Act specifically allows for new rule making authority. Under this section, which amends the National Flood Insurance Act of 1968 (Public Law 90-448), the Secretary may by rule establish temporary floodway boundaries pending the establishment of the permanent boundaries required under Section 5 of this Act.

In addtion, the establishment and application of the permanent Floodway boundaries required under this Act may require or result in the issuance of regulations.

CHANGES IN EXISTING LAW

Section 12 or rule XXVI of the Standing rules of the Senate requires publication of the changes in existing law made by the reported bill.

S. 1696, as reported by the Committee on Environment and Public Works, makes the following change to existing law:

Public Law 90-448, title XIII (82 Stat. 572), as amended, is amended by adding the following at the end thereof:

SEC. 1322. (a) Owners of existing National Flood Insurance Act policies with respect to structures located within the Floodway established under section 5 of the Colorado River Floodway Protection Act shall have the right to renew and transfer such policies. Owners of existing structures located within said Floodway on the date of enactment of the Colorado River Floodway Protection Act who have not acquired National Flood Insurance Act policies shall have the right to acquire policies with respect to such structures for six months after the Secretary of the Interior files the Floodway maps required by section 5(b)(2) of the Colorado River Floodway Protection Act and to renew and transfer such policies.

(b) No new flood insurance coverage may be provided under this title on or after a date six months after the enactment of the Colorado River Floodway Protection Act of any new construction or substantial improvements of structures located within the Colorado River Floodway established by section 5 of the Colorado River Floodway Protection Act. New construction includes all structures that are not insurable prior to that date.

(c) The Secretary of the Interior may by rule after notice and comment pursuant to 5 U.S.C. 553 establish temporary Floodway boundaries to be in effect until the maps required by section 5(b)(2) of the Colorado River Floodway Protection Act are filed, for the purpose of enforcing subsections (b) and (d) of this section.

(d) A federally supervised, approved, regulated or insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section; *Provided*, That prior to making such a loan, such institution determines that the loans or structures securing the loan are within the Floodway.

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